IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.7178 OF 2005

M/s. Janalaxmi Co-operative Bank Ltd. .... Petitioner
Vs.
Navneet Arjun Desale & Ors. .... Respondents

Shri R.V. Paranjpe for the Petitioner.

Shri M.S. Karnik for the Respondent No.1.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: NOVEMBER 07, 2006

P.C:

1. Heard. The petitioner challenges the concurrent findings arrived at by the Courts below regarding the victimisation of the respondent (No.1) on account of shockingly disproportionate and harsh punishment imposed upon the respondent. The contention which is sought to be raised on behalf of the petitioner is that once the Labour Court held that the findings arrived at by the inquiry officer were baseless, it was necessary for the Labour Court to give opportunity to the petitioner to prove the charges.

2. At the outset it is to be noted that the grievance regarding failure on the part of the Labour Court to give such opportunity was never raised before the Industrial Court. On that count itself, the challenge

to the impugned orders on the above ground is liable to be rejected. That apart, the records nowhere disclose that the petitioner had requested for such an opportunity after the finding of the Labour Court regarding the observations of the inquiry officer being baseless. Besides, the order passed by the Labour Court on this aspect reads thus:

> "There is of course no evidence and not even allegation in the charge sheet that the complainant had willfully insulted the superiors by words and action. When there are no specific allegations in the charge sheet in that regard or the supporting evidence, then observations of the enquiry officer in that regard are baseless. For the same reason there is no question of giving further opportunity to the respondents, to justify the said observations of the enquiry officer."

The above observations are themselves sufficient to disclose that the contention sought to be raised regarding failure on the part of the Labour Court to give opportunity to the petitioner to prove the charges against the respondent are devoid of substance.

3. It is also pertinent to note that in the case in hand the records disclose that the respondent was made to face inquiry primarily on the ground that the employee had sought to attend to his duties prior to the working hours and secondly because he had insisted for written instructions to restrain himself from attending to the duties prior to the duty hours. The clear observations in that regard in the order of the Labour Court read thus:

> "The witness of the bank has admitted that late attendance is a misconduct whereas reporting for duties early is no misconduct. The acts on the part of the complainant though technically amounted to misconduct, had to be treated keeping in mind the apprehension in the mind of the complainant. Further the rudeness in the complainant in insisting for written instructions might not be justified, but then insistence for written instructions for doing something which is contrary to the usual procedure is also not justifiable."

These observations clearly disclose that the proceedings

against the respondent and the order of dismissal were clearly act of victimisation on the part of the manager and therefore no fault can be found with the concurrent orders passed by the Courts below, directing reinstatement of the respondent with the necessary consequences. The orders do not disclose any jurisdictional error nor any case is made out for interference therein in exercise of writ jurisdiction under Article 227 of the Constitution of India. Hence the petition fails and is hereby rejected.

(R.M.S. Khandeparkar, J.)

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